

REMARKS

Claims 1-17 are now in the case.

Applicants have amended claims 1, 5, 6, 10, 12 and 16 to clarify the subject matter which is claimed in this application.

Support for the amendments and newly added claims can be found in the specification, drawings and claims as filed (see page 7 lines 22-36, page 28, lines 7-13).

Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached page is captioned "Version with markings to show changes made."

Election requirement

In the Office action dated October 3, 2001, the Examiner requested that the provisional election requirement previously made by the Applicants be affirmed.

Applicants hereby respectfully elect Group I, claims 1-17 without traverse.

Rejection Under 35 U.S.C. § 112

The Examiner has rejected claims 1-17 under 35 U.S.C 112, second paragraph, as being indefinite for failing to particularly point out and distinctively claim the subject matter which the Applicants regards as the invention.

The Examiner stated that "with regards to claims 1, 6 and 12, it is unclear what is being claimed." Applicants respectfully submit that the present invention, as evidenced by the preamble of the instant claims, is directed to an **article of manufacture** comprising three elements: (1) a package, (2) a cleaning sheet in said package, and (3) information in association with the package.

The Examiner stated that "the scope of claims 1, 5, 6, 10 and 16 is unclear." Applicants submit that claims 1, 6 and 16 have been amended and now include the limitation of a cleaning sheet wherein said cleaning sheet removes allergens from said surface. It is therefore Applicants' position that this amendment should clarify the scope of these claims.

The Examiner stated that "with regards to claims 6 and 11, a "traditional cleaning device" is disclosed and that it is unclear to the Examiner what is meant by traditional." Applicants respectfully

traverse this rejection. Applicants would like to point the Examiner's attention to the paragraph starting page 8, line 5 and ending line 12 which reads as follows:

"As used herein, the term **"traditional cleaning device"** refers to prior products used by consumers for many years to mop and/or dust household surfaces (especially floors). Traditional cleaning devices include, but are not limited to, brooms with nylon bristles, brooms with foam broom heads, brooms with rubber bristles, dust mops with looped cotton strings, dust mops with chamois-type head covers, and the like. **Traditional cleaning devices** do not include the present cleaning sheets or the present cleaning implements comprising a handle to which the present cleaning sheets are removably attached." (Emphasis added)

It is therefore the Applicants' position that the term "traditional cleaning device" is clearly and unambiguously defined in the specification and that it does comply with 35 U.S.C. 112 requirements.

The Examiner also stated that "with regards to claim 12 and 17, it is unclear what is meant by allergy-related products? Does the product cause or relieves allergies?" Applicants respectfully traverse this rejection. Applicants would like to point the Examiner's attention to the paragraph starting page 7, line 22 and ending page 8 line 4 which reads as follows:

"As used herein, the term **"allergy-related product"** refers to products that are marketed to help relieve and/or prevent allergy-related symptoms or control allergens, as well as the source of allergens, such as dust mites. Allergy-related products include, but are not limited to: non-prescription drugs; prescription drugs, especially including, but not limited to, antihistamines, antiinflammatory drugs, glucocorticosteroids, beta-adrenergics and leukotriene modifiers or antagonists; products that control and/or kill the sources of allergens, such as dust mites, including, but not limited to, carpet powders, household sprays, pillowcases, and mattress covers; air filters; HEPA filters; vacuums, especially those with HEPA filters; air purification devices; air pollution monitors; books (especially those relating to the treatment of allergy-related symptoms); face masks for filtering air; water filters (especially those for use in showers and/or bathtubs); household cleaning products, including, but not limited to, hard surface cleaning detergents (especially for floors and countertops), dusting sprays (especially for dusting and/or polishing furniture and household surfaces), and laundry detergents and/or additives capable of controlling and/or killing allergens and the sources thereof; personal cleansing products for either humans and/or animals including, but not limited to, bar soaps, liquid soaps, shampoos, and skin lotions; and the like. As defined herein, the term **"allergy-related product"** further includes the present cleaning sheets, implements, and articles of manufacture." (Emphasis added)

It is Applicants' position that the term "allergy-related product" is clearly defined in the specification and that it refers to "products which help relieve and or prevent allergy-related symptoms, or control allergens, as well as the source of allergens."

Reconsideration and withdrawal of the rejection is therefore respectfully requested.

Rejections Under 35 U.S.C. § 103(a).

The Examiner has rejected claims 1, 2, 4-7, 9-13 and 15-17 under 35 U.S.C. 103(a) as being unpatentable over the '621 patent. Applicants traverse this rejection.

Applicants submit that claim 1 has been amended and now claims a cleaning sheet wherein said cleaning sheet is in a package and wherein said cleaning sheet **removes at least about 88% of allergens from said surface when said sheet is used to wipe said surface.** (Emphasis added)

Applicants submit that claim 6 has been amended and now claims a cleaning sheet wherein said cleaning sheet is in a package and wherein said cleaning sheet removes relatively more allergens from said surface as compared to traditional cleaning devices when said sheet is used to wipe said surface and **information** in association with said package comprising an **instruction to remove relatively more allergens from a surface as compared to traditional cleaning devices**, by wiping said surface at least once with said cleaning sheet. (Emphasis added)

Applicants submit that claim 12 has been amended and now claims a cleaning sheet wherein said cleaning sheet removes allergens from said surface when said sheet is used to wipe said surface and **information** in association with said package comprising an instruction to **use said cleaning sheet in combination with an allergy-related product.** (Emphasis added)

It is basic patent law that "[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation ... to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure." *In re Vaack*, 947 F.2d 488, USPQ 2d 1438 (Fed Cir. 1991).

As best understood by Applicants, Clark et al disclose a pre-moistened hard surface wiping article. Clark et al does not teach or suggest that the disclosed article provide any allergen removal benefits. Applicants note that removing allergens from a surface is different from simply removing soil or dust from the surface. As a result, Clark et al does not teach or suggest instructions in association with a package to direct the consumer to remove allergens by wiping the surface with the sheet. Since it was unknown to Clark et al that the article of the present invention provides allergen removal benefits, the present article of manufacture is unobvious in view of Clark et al. Applicants would like to point out to the Examiner that the instant instructions are not merely a statement of intended use, but rather are an integral part of the present invention, being one of the elements of the

claimed article of manufacture. For without the instructions, the problem solved by the present invention—i.e. removing allergens from a surface—would not be resolved because users of the article of manufacture would be unaware of the allergen removal benefit to bring about the solution to the problem at hand. It has been held that “printed matter, in an article of manufacture claim, *can* be given ‘patentable weight’.” In *re Miller*, 164 U.S.P.Q. 46, 49 (C.C.P.A. 1969) (emphasis in original). In *Miller*, the court found that the printed matter of Miller’s invention was functionally related to Miller’s volume measuring device and reversed the rejection. *See Miller*, 164 U.S.P.Q. at 48-49. Here, an important difference between the present invention and Clark et al. involves the instructions—which are an element of the claimed article of manufacture—in association with the package and sheet—which are the other elements of the claimed invention. “Differences between an invention and the prior art cited against it cannot be ignored merely because those differences reside in the content of the printed matter. . . . The claim must be read as a whole.” In *re Gulack*, 217 U.S.P.Q. 401, 403 (Fed. Cir. 1983) (citations omitted). When each claim is read as a whole, Claims 1-17 of the present invention are patentable over Clark et al. “What is required is the existence of *differences* between the appealed claims and the prior art sufficient to establish patentability. The bare presence or absence of a specific functional relationship, without further analysis, is not dispositive of obviousness. Rather, the critical question is whether there exists any new and unobvious functional relationship between the printed matter and the substrate.” *Gulack*, 217 U.S.P.Q. at 404 (citations omitted) (emphasis in original). Here, a new and unobvious functional relationship exists between the instant instructions, package, and cleaning sheet. This functional relationship arises from the instructions being in association with the package and cleaning sheet in order to communicate to the consumer the allergen removal benefits by wiping a surface with the sheet that is required to achieve resolution of the problem at hand—i.e. removing allergens originally present on the surface. This functional relationship renders the claimed article of manufacture unobvious and patentable over Clark et al.

Applicants submit that the ‘621 does not teach or suggest a cleaning sheet in a package with instructions to remove at least about 88% of allergens from said surface when said sheet is used to wipe said surface.

Applicants submit that the ‘621 does not teach or suggest a cleaning sheet in a package with instructions to remove at relatively more allergens from said surface as compared to dust mops or brooms when said sheet is used to wipe said surface.

Applicants submit that the ‘621 does not teach or suggest a cleaning sheet in a package and information in association with said package comprising an instruction to use said cleaning sheet in combination with an allergy-related product. (Emphasis Added)

Even assuming *arguendo* that the pre-moistened article disclosed in the '621 is capable of removing at least about 88% of allergens from a surface when said sheet is used to wipe the surface or a cleaning sheet which removes relatively more allergens from a surface as compared to dust mops or brooms when said sheet is used to wipe the surface, it is well settled that "what may be inherent is not necessarily known. Obviousness cannot be predicated on what is unknown." *In re Naylor*, 369 F.2d 765, 768 (CCPA 1967); also *In re Newell*, 891 F.2d 899 (Fed. Cir. 1989) which stated that "a retrospective view of inherency is not a substitute for some teaching or suggestion which supports the selection and use of the various elements in the particular claimed combination."

Furthermore, since Clark et al. do not teach or suggest that its wiping articles can remove allergens, one skilled in the art would not be motivated to provide information with the wiping article to instruct a consumer to remove allergens from a surface.

It is therefore the Applicants' position that the Examiner did not establish a prima facie case of obviousness when the Examiner rejected claims 1, 6 and 12.

The Examiner rejected claims 3, 8 and 14 under 35 U.S.C. 103(a) as being unpatentable over Clark et al in view of Henry and Thrasher.

Applicants have previously established that Clark et al does not teach or suggest that the disclosed article provides any allergen removal benefits.

Applicants submit that neither Henry nor Thrasher teach or suggest that the disclosed article provide any allergen removal benefits. Applicants note that removing allergens from a surface is different from simply removing soil or dust from the surface. As a result, neither Henry nor Thrasher teach or suggest instructions in association with a package to direct the consumer to remove allergens by wiping the surface with the sheet. Since it was unknown to Henry and/or Thrasher that the article of the present invention provides allergens removal benefits, the present article of manufacture of claims 3, 8 and 14 is unobvious over of Clark et al in view of Henry and Thrasher.

Reconsideration and withdrawal of the rejections are therefore requested.

In light of the foregoing, early and favorable action on all claims is requested.

Respectfully submitted,

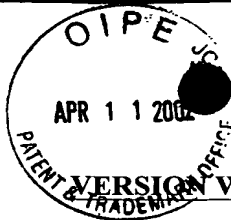
BROWN et al.

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VERSION WITH MARKING TO SHOW CHANGES MADE.

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IN THE CLAIMS

Please, amend the claims as follows:

1. (Amended) An article of manufacture for removing allergens from a surface comprising:
 - (a) a package;
 - (b) a cleaning sheet [capable of removing] wherein said cleaning sheet is in said package and wherein said cleaning sheet removes at least about 88% of allergens from said surface when said sheet is used to wipe said surface; and
 - (c) information in association with said package comprising an instruction to remove at least about 88% of allergens from said surface by wiping said surface at least once with said cleaning sheet.
5. (Amended) An article according to Claim 1, wherein said cleaning sheet removes at least about 90% of allergens from said surface when said sheet is used to wipe said surface and wherein said information comprises an instruction to remove at least about 90% of allergens from said surface by wiping said surface at least once with said cleaning sheet.
6. (Amended) An article of manufacture for removing allergens from a surface comprising:
 - (a) a package;
 - (b) a cleaning sheet wherein said cleaning sheet is in said package and wherein said cleaning sheet removes relatively more allergens from said surface as compared to dust mops or brooms when said sheet is used to wipe said surface; and
 - (c) information in association with said package comprising an instruction to remove relatively more allergens from a surface as compared to traditional cleaning devices and combinations thereof, by wiping said surface at least once with said cleaning sheet.
10. (Amended) An article according to Claim 6, wherein said cleaning sheet removes at least about 88% of allergens from said surface when said sheet is used to wipe said surface and wherein said information further comprises an instruction to remove at least about 88% of allergens from said surface by wiping said surface at least once with said cleaning sheet.
12. (Amended) An article of manufacture for removing allergens from a surface comprising:

- (a) a package;
- (b) a cleaning sheet wherein said cleaning sheet is in said package and wherein said cleaning sheet removes allergens from said surface when said sheet is used to wipe said surface;
and
- (c) information in association with said package comprising an instruction to use said cleaning sheet in combination with an allergy-related product

16. (Amended) An article according to Claim 12, wherein said cleaning sheet removes at least about 88% of allergens from said surface when said sheet is used to wipe said surface and wherein said information further comprises an instruction to remove at least about 88% of allergens from said surface by wiping said surface at least once with said cleaning sheet.